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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,735	09/01/2000	Andrew F. Suhy JR.	65678-0032	5810

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EXAMINER

HEWITT II, CALVIN L

ART UNIT

PAPER NUMBER

3621

DATE MAILED: 03/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/653,735

Applicant(s)

SUHY, ANDREW F.

Examiner

Calvin L Hewitt II

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Status of Claims

1. Claims 1-20 have been examined.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 8, 10, 11, and 18-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are directed to and include in scope a human being, however, the grant of a limited, but exclusive property right in a human being is prohibited by the Constitution.

Claim 19 is also rejected as it depends from claim 18.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Koether, U.S. Patent No. 5,875,430 in view of Albertshoffer, U.S. Patent No. 6,230,081.

As per claims 1-20, Koether teaches a system for gathering and analyzing data regarding an asset comprising:

- a local controller, analysis controller, electronic communications network, and a sub-system that analyzes at least one operating characteristic of the asset (figures 1-3 and 7A-8)
- monitoring a plurality of characteristics over a fixed period of time (figure 7A; column/line 8/48-9/3; column 9, lines 28-34)
- receiving operating characteristics adjusted by maintenance information to provide an overall asset utilization (column/line 8/48-9/44)
- asset user, asset owner, and asset supplier or maintenance organization (figure 8; column 10, lines 30-45)
- assets are limited in motion to a pre-determined geographic region (column 4, lines 22-36)

Regarding surcharges (claims 2-4), the Examiner takes Official Notice that surcharges and the appliance of surcharges are old and well-known to those of ordinary skill in the art. Koether also teaches transmitting data (figures 1-3). Therefore, it would have been obvious to transfer data by any means (e.g. real-time, "almost" real time, batch, sequentially, push, pull) in order to implement corporate policy and produce a desired result. However, Koether doesn't explicitly recite determining a lease rate. Albertshofer teaches an asset usage monitoring system that monitors asset performance (e.g. plurality of characteristics over a fixed period of time, maintenance information) to determine a leasing rate (column 1, lines 55-61; column 2, lines 36-44; column 3, lines 31-39; column 4, lines 10-26; column 6, lines 23-27 and 40-50) and assets that are limited in motion to a pre-determined geographic region (figure 1; column 4, lines 30-37). Therefore, it would have been obvious to one of ordinary skill to combine the systems of Koether and Albertshofer in order to accurately determine fees for the rental or leasing of capital equipment.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koether, U.S. Patent No. 5,875,430 and Albertshoffer, U.S. Patent No. 6,230,081 as applied to claim 8 above, and further in view of Nguyen et al., U.S. Patent No. 6,003,808.

As per claim 11, Koether (figures 1-3 and 7A-8) teaches a system for monitoring the performance of an asset and Albertshoffer (column 4, lines 10-26; column 6, lines 23-27 and 40-50) teaches deriving lease rate information based asset usage. However, neither reference explicitly recites analyzing maintenance information to evaluate a relationship based on maintenance performance. Nguyen et al. teach a maintenance and warranty control system that includes analyzing maintenance information to evaluate a relationship based on maintenance performance (column/line 4/32-5/15). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Koether, Albertshofer and Nguyen et al. in ordinary to validate warranty claims and/or allow an asset owner to determine whether to recall, or re-engineer a product based on, for example, the number of warranty claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Baker teaches a user calibrated electronic speedometer and odometer

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8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone number is (703) 308-8057. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James P. Trammell, can be reached at (703) 305-9768.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

c/o Technology Center 2100

Washington, D.C. 20231

or faxed to:

(703) 305-7687 (for formal communications intended for entry and after-final communications),

or:

(703) 746-5532 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, 7th Floor Receptionist.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

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Calvin Loyd Hewitt II

March 7, 2003

John W. Hayes
JOHN W. HAYES
PRIMARY EXAMINER